

## Section 6015.—Relief From Joint and Several Liability on a Joint Return

26 CFR 1.6015-5: Relief from joint and several liability. Time and manner for requesting relief.

**Executors, relief from joint and several liability.** This ruling provides for an executor (including any other duly appointed representative) to pursue an existing request for relief from joint and several liability or file a request for relief on behalf of a decedent. Section 6903 of the Code provides that any person acting for another person in a fiduciary capacity assumes the rights of that person. This ruling concludes that the authority granted to fiduciaries in section 6903 includes the authority for an executor (including any other duly appointed representative) to seek relief pursuant to section 6015 of the Code.

## Rev. Rul. 2003-36

### ISSUES

1. Whether an executor (including any other duly appointed representative) of a decedent's estate may pursue a request for relief from joint and several liability under section 6015 of the Internal Revenue Code made during the decedent's lifetime?

2. Whether an executor of a decedent's estate may file a section 6015 request for relief from joint and several liability on behalf of the decedent?

### FACTS

Situation 1. W and H were married. For taxable year 2000, W and H claimed deductions on their joint income tax return relating to an investment owned entirely by H. In 2002, the Internal Revenue Service proposed to disallow the deductions and make adjustments to the joint return for taxable year 2000. W then filed a Form 8857, "Request for Innocent Spouse Relief," electing to seek relief under section 6015(b) and (c) or, alternatively, seeking equitable relief under section 6015(f). W died while the request for relief from joint and several liability was pending. The executor of W's estate pursued the request for relief from joint and several liability that W made during her lifetime.

Situation 2. W and H were married. For taxable year 2000, W and H claimed deductions on their joint return relating to an investment owned entirely by H. In 2001, the Service proposed to disallow the deductions and make adjustments to the joint return for taxable year 2000. W died in 2002, and later that year W's executor filed a Form 8857, "Request for Innocent Spouse Relief," electing to seek relief under section 6015.

### LAW AND ANALYSIS

Section 6013(a) allows a husband and wife to elect to make a joint income tax return. Section 6013(a)(3) provides that, in the case of death of a husband, wife or both, an executor may make a joint return with respect to a decedent. If an executor is appointed after a surviving spouse makes a joint return, the executor may disaffirm the joint return in the manner prescribed by section 6013(a)(3). If a husband and wife make a joint return, then the liability with re-

spect to the tax shall be joint and several pursuant to section 6013(d)(3).

Under section 6015, an individual who makes a joint return may elect to seek relief from joint and several liability. Section 6015(b) provides procedures for seeking relief from joint and several liability applicable to all joint filers. Relief from joint and several liability pursuant to section 6015(c) only applies to limit tax liability for joint filers who are no longer married, legally separated, or not members of the same household for a period of at least 12 months prior to filing a request. Section 1.6015-3(a) of the Income Tax Regulations provides guidance as to the marital status of a deceased requesting spouse. Section 6015(f) provides authority for the Service to grant equitable relief when relief is not otherwise available under section 6015(b) or (c), if taking into account all the facts and circumstances, the Service determines that an individual seeking relief (a "requesting spouse") should not be held liable.

Section 6015 does not expressly authorize an executor to file a request for relief from joint and several liability resulting from a joint return pursuant to section 6013. The regulations under section 6015, however, contemplate that a requesting spouse may be deceased.

An executor, acting on behalf of a decedent's estate in a fiduciary capacity, is granted broad authority. Some of the authority is explicitly provided by statute and other authority is derived from an executor's fiduciary obligations. The explicit authority of an executor on behalf of a decedent's estate under the Code includes, but is not limited to, requesting prompt assessment and discharge from personal liability under section 6501(d), electing to treat a revocable trust as part of an estate under section 645, electing an alternate valuation date under section 2032, making a qualified terminal interest property election under section 2056(b)(7), electing to extend the time for payment of estate taxes under section 6166, postponing the payment of estate taxes attributable to reversionary or remainder interests under section 6163(a), making a return for a short period under section 443(a), electing to recognize gain or loss on distributions of property in kind under section 643(e), and electing S corporation status under section 1362.

Section 6903 provides that, upon notice to the Secretary that any person is acting for another person in a fiduciary capacity, the fiduciary shall assume the powers, rights, duties, and privileges of the other person in respect of a tax imposed by the Code. The term “fiduciary” is defined in section 7701(a)(6) as a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

Because an executor assumes the rights of a decedent’s estate pursuant to the broad grant of authority in section 6903 and has specific authority to make and disaffirm joint returns under section 6013(a)(3), an executor also is authorized to seek relief from joint and several liability pursuant to section 6015 on behalf of a decedent. It makes no difference whether the request for relief is an election pursuant to section 6015(b) or (c), or a request for equitable relief pursuant to section 6015(f). It also follows that an executor may pursue an existing request for relief from joint and

several liability pursuant to section 6015 that was made during the requesting spouse’s lifetime. The Tax Court implicitly recognized that an executor may pursue an existing request in *Jonson v. Commissioner*, 118 T.C. 106 (2002), *appeal docketed*, No. 02–9009 (10<sup>th</sup> Cir. May 24, 2002) (taxpayer appeal on other grounds).

While an executor may pursue an existing request or seek relief from joint and several liability under section 6015(c), relief will not be available unless the decedent had satisfied the eligibility requirements while alive. To determine marital status for purposes of section 6015(c), section 1.6015–3(a) of the Income Tax Regulations provides for determination of marital status of a deceased requesting spouse as of the earlier of the date of the section 6015(c) election or the date of death in accordance with section 7703(a)(1). The Tax Court in *Jonson* held that the eligibility requirements under section 6015(c), that the joint filers be no longer married, legally sepa-

rated, or not members of the same household, cannot be satisfied by the death of a requesting spouse.

## HOLDINGS

Situation 1. An executor of a decedent’s estate may pursue a section 6015 request for relief from joint and several liability made during the decedent’s lifetime.

Situation 2. An executor of a decedent’s estate has authority under section 6903 to file a request for relief pursuant to section 6015 as long as the decedent had satisfied any applicable requirements while alive.

## DRAFTING INFORMATION

The principal author of this revenue ruling is Jamie G. Bernstein of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact Ms. Bernstein at (202) 622–4940 (not a toll-free call).